No. 72-851

IN THE

Supreme Court of the United States

October Term, 1972

THE ONEIDA INDIAN NATION OF NEW YORK STATE, also known as the ONEIDA NATION OF NEW YORK, also known as the ONEIDA INDIANS OF NEW YORK, and THE ONEIDA INDIAN NATION OF WISCONSIN, also known as the ONEIDA TRIBE OF INDIANS OF WISCONSIN, INC.,

Petitioners,

v.

THE COUNTY OF ONEIDA, NEW YORK, and THE COUNTY OF MADISON, NEW YORK,

Respondents.

REPLY TO MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

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STATEMENT

This is a reply to the Memorandum For The United States as Amicus Curiae heretofore filed in this Court.

DISCUSSION

1. The Memorandum for the United States indicates that the sole purpose of enactment of 28 U.S.C. 1362 is to repeal the $10,000 jurisdictional amount limitation as to Indian Tribes. However, the official heading of the bill reads as follows:

> " AN ACT
>
> To amend the Judicial Code to permit Indian tribes to maintain civil actions in Federal district courts without regard to the $10,000 limitation, and for other purposes." [Emphasis Added]

Thus removal of the $10,000 was not the sole purpose. What the "other purposes" are must be gleaned from the Legislative History of the bill. As shown in our prior briefs, the documents before Congress are replete with the concept that Indian tribes would or might be suing in Federal court while not in possession of the disputed land.

A further indication that more than a change in jurisdictional amount was intended is the further provision concerning 28 U.S.C. 1362 that:

> "Sec. 2. The chapter analysis of chapter 85 of title 28 of the United States Code is amended by adding at the end thereof the following new item:
> '1362 Indian tribes.'."

See Public Law 89-365, 89th Congress, S.1356; 62 Stat. 930; approved October 10, 1966. Thus the chapter analysis characterizes the new section: "Indian Tribes", a broad, generalized section and not merely as an exception to the $10,000 rule.

2. In footnote 2 on page 8, the Memorandum for the United States states that the "well pleaded complaint" rule was not an issue before the Ninth Circuit in Skokomish Indian Tribe v. France.

We believe, on reading of the opinion and the appellate briefs in the Skokomish case, that the "well pleaded complaint" rule was a crucial turning point and that precisely the same jurisdictional issue was presented in that case as in the Oneida case. For instance, the Indians in Skokomish were not in possession of the disputed lands. It should not be presumed that the Ninth Circuit and the counsel for the parties, including the United States as party defendant, were unaware of the "well pleaded complaint" rule.

CONCLUSION

The Memorandum for the United States states that the view of the Solicitor General is not shared by all government lawyers and includes part of a letter from the Acting Solicitor of the Department of Interior written to state his "reasons why we think the United States should recommend that certiorari be granted." This confirms that a significant jurisdictional question is involved here.

This case involves the present ability of Indian tribes throughout the United States to protect their land rights and to recover land unlawfully taken from them. Certiorari should be granted.

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May 18, 1973.